

Justin Safayeni
Direct Line: 647-963-5486
JustinS@stockwoods.ca

July 15, 2026

PRIVILEGED AND CONFIDENTIAL

Sent by Email (via Bryan.Boles@portcolborne.ca)

Bryan Boles
Chief Administrative Officer
Corporation of the City of Port Colborne
City Hall – 66 Charlotte Street, Port Colborne
Ontario, Canada L3K 3C8

Dear Mr. Boles:

Re: Prospects for successful judicial challenge of Urgent Care Centre closure

You have asked me to consider the prospects for a successful judicial challenge of the decision by the province (likely via the provincial Minister of Health) to approve closure of the Port Colborne Urgent Care Centre (“UCC”).

In arriving at this opinion, I have reviewed the opinion of Cathi Mietkiewicz dated April 14, 2026. I have not tread over the same substantive ground as Ms. Mietkiewicz, particularly as it relates to the governing statutory scheme and the relevant decision-making framework relating to the closure of the UCC.

I have identified the key assumptions I make for the purposes of the opinion below, including the key assumption that Niagara Health received relevant and necessary approvals from the Minister of Health for the closure of the UCC (as part of the broader plan by Niagara Health to open the new South Niagara Hospital) in or around 2015-2017.

SUMMARY OF CONCLUSIONS

In brief, my conclusions are as follows:

- The most appropriate vehicle for challenging the closure of the UCC is likely an application for judicial review of the Minister of Health’s approval decision. Such applications are meant to be brought within approximately six months of the decision under review. While the Court retains the discretion to allow “late” applications, the extent of delay in this case — which arguably extends for more than a decade — will likely be fatal, or at the very least a significant preliminary obstacle.

- Even assuming the Court allows the case to proceed on its merits despite the significant delay, an application challenging the Minister's decision to approve closure of the UCC as part of a broader initiative that involves opening a new hospital is very unlikely to succeed. Courts grant governments significant deference when it comes to these kinds of matters. I am only aware of one case where a similar "closure"-type decision was successfully challenged — and that case was decided some 50 years ago in very different circumstances.
- Beyond being unlikely to succeed, an application for judicial review will also likely be expensive (well beyond \$100,000) and time-consuming (likely more than a year to receive a decision).
- The alternatives of a challenge under the *Canadian Charter of Rights and Freedoms*, or a complaint under provincial human rights legislation, are not available to the City of Port Colborne and would have to be brought by individuals in their own capacity. I am not aware of any kind of successful challenge to the closure of a healthcare facility under either approach.

ANALYSIS

A. Application for Judicial Review Faces Significant Preliminary Hurdle Due to Delay

While we do not have an exact decision date for when Ontario's Minister of Health approved closure of the UCC as part of Niagara Health's broader plan to open a new South Niagara Hospital, I've been advised that our best information is that it likely occurred sometime in or around 2015-2017.

Assuming that to be the case, there would be an approximately decade-long delay in bringing an application for judicial review. In the face of such significant delay, there is a very real risk that a court will decline to even hear the case on its merits.

Applications for judicial review are heard in Ontario's Divisional Court. The current legislation sets a deadline of 30 days to file an application "after the date the decision or matter for which judicial review is being sought was made or occurred", subject to the court's residual discretion to extend time. However, these provisions do not apply to decisions made before 2020.¹ Instead, for decisions made pre-2020, there was no statutory deadline for filing an application and the Divisional Court exercised discretion on a case-by-case basis, using 6 months as the rough cutoff for late applications. The Court summarized its pre-2020 approach as follows:

Undue delay in pursuing an application for judicial review can be grounds, in the exercise of the court's discretion, for refusing the application. The Divisional Court has held on numerous occasions that a delay of six months or more in the commencement of the application, and/or 12 months or more in its perfection, could be serious enough alone to warrant dismissal.²

In assessing delay under the pre-2020 approach, the Court considered (i) the length of delay; (ii) whether there's a reasonable explanation for the delay; and (iii) whether the responding party or any third party has experienced prejudice as a result of the delay.³

¹ *Judicial Review Procedure Act*, RSO 1990, c. J.1, section 5.

² *Gillies v. Bluewater District School Board*, 2023 ONSC 1625 (Div Ct) at para. 8 (emphasis added).

³ *Ibid.* at para. 9.

In the present case, these factors all seem to militate against the Court hearing a judicial review application filed some 10 years after the relevant approval to close the UCC. In particular:

- The length of delay is excessive. For a sense of perspective, the Court previously characterized a delay of 21 months as “egregious” and refused to hear the case.⁴
- I am not aware of any reasonable explanation for the delay. The fact that the City may not have been aware of the precise date of the Minister’s approval decision is unlikely to be considered a reasonable explanation, particularly in circumstances where the City could have obtained that information by making inquiries.
- With respect to prejudice, I anticipate that the Minister of Health and/or Niagara Health could show prejudice in the sense that significant steps have been taken towards the opening of the new hospital that is premised on the closure of the UCC (among other events). Even if actual prejudice cannot be demonstrated by the Minister of Health and/or Niagara Health, prejudice can be presumed from a lengthy delay.⁵

In the circumstances, and given the significant delay in this case, I expect that the Divisional Court would likely exercise its discretion not to entertain any application for judicial review on the merits. At the very least, we should expect that the responding parties (the Minister of Health and potentially Niagara Health as well) would rely on the lengthy delay in an attempt to have the application dismissed, making it a significant preliminary hurdle to overcome.

B. Application for Judicial Review Unlikely to Succeed on the Merits

Even if the application for judicial review of the Minister’s decision approving closure of the UCC could overcome the delay hurdle and be reviewed by the Divisional Court on its merits, it is unlikely to succeed. My assessment here is based on the general nature of these kinds of decisions, with the obvious caveat that I have not seen the approval decision itself or the record of relevant documents informing that decision.

Courts are understandably reluctant to intervene in decisions regarding the closure of healthcare facilities. In the context of an application for review of a decision of the Health Services Restructuring Commission, the Divisional Court put it this way:

The court's role is very limited in these cases. The court has no power to inquire into the rights and wrongs of hospital restructuring laws or policies, the wisdom or folly of decisions to close particular hospitals, or decisions to direct particular hospital governance structures. It is not for the court to agree or disagree with the decision of the Commission. The law provides no right of appeal from the Commission to the court. The court has no power to review the merits of the Commission's decisions. The only role of the court is to decide whether the Commission acted according to law in arriving at its decision.⁶

While the UCC’s closure is subject to approval by a different decision-maker — the Minister of Health, as opposed to the Commission — the same general principles apply.

⁴ *Ibid.* at para. [13](#).

⁵ *Ibid.* at para. [15](#).

⁶ *Pembroke Civic Hospital v. Ontario (Health Services Restructuring Commission)*, [1997 CanLII 16241 \(Div Ct\)](#)

In these circumstances, the narrow route to potential success on an application for judicial review would require demonstrating that the Minister's exercise of discretion was unlawful because it went beyond what the statute allowed them to consider. This could happen where the Minister considered irrelevant factors beyond what the statute mandated, or failed to consider relevant factors required by statute, for example.

In practice, this is very difficult to establish. As far as I am aware, there is only one successful application for judicial review involving closure of a healthcare facility. It occurred 50 years ago in [*Re Doctors Hospital and Minister of Health*](#). In that case, the Divisional Court found that the Minister acted unlawfully by approving closure of a hospital based on "extraneous considerations" that were not allowed by law, namely "budgetary constraints". The Court found that the *Public Hospitals Act*, as it then was, did not allow for closures to be made on the basis of purely financial considerations, and that the Minister's explicit statements that this was the sole basis for the closures made the approvals unlawful.

The result in *Re Doctors* has not been repeated since in the context of any hospital or health facility closure, and it is not hard to understand why. The facts in *Re Doctors* made a challenge uniquely easy: the Minister had literally told stakeholders that the basis for the closures was purely financial. Even if that is the reality behind their decision-making, Ministers now know better, at least when it comes to framing the considerations that led to their decision. Ministers and other government decision-makers can quite easily frame the motivations for their decision-making in terms that are not purely driven by budgetary or financial constraints. Moreover, the Minister's statutory discretion under the current version of the *Public Hospitals Act* is broadly framed and allows for granting or denying approvals based on the Minister's assessment of what is "in the public interest"⁷, providing significant latitude for rationalizing the decisions in question. Indeed, the current version of the *Public Hospitals Act* defines "public interest" extremely broadly:

9.1 (1) In making a decision in the public interest under this Act, the Lieutenant Governor in Council or the Minister, as the case may be, may consider any matter they regard as relevant including, without limiting the generality of the foregoing,

- (a) the quality of the management and administration of the hospital;
- (b) the proper management of the health care system in general;
- (c) the availability of financial resources for the management of the health care system and for the delivery of health care services;
- (d) the accessibility to health services in the community where the hospital is located; and
- (e) the quality of the care and treatment of patients.⁸

Again, unless the Minister has gone beyond what the relevant statute allows them to consider or acts for a purpose that runs contrary to the statutory scheme, courts will not second guess the wisdom of Ministerial approvals when it comes to closing or re-organizing healthcare facilities. Under the current statutory framework, it is difficult to see how the Minister's "public interest" assessment could fall into the same category as *Re Doctors*, given the lack of any firm constraints on what factors must be considered, or what factors cannot be considered.

⁷ C. Mietkiewicz Opinion at PDF 5.

⁸ Underlining added.

C. Practical considerations: time and expense

An application for judicial review of the Minister's decision to approve closure of the UCC as part of opening a new hospital complex is likely to be fiercely fought by the Ministry, as well as potentially by Niagara Health as well, and perhaps other stakeholder or community groups that do not wish to have the Ministry's approval set aside. In the circumstances, the City's legal expenses should be expected to surpass \$100,000. If unsuccessful, the City would presumptively be responsible for 50-65% of the responding parties' legal fees, adding another \$75,000 or more to the final tally.

In terms of timing, courts do not typically move quickly. Even trying to press matters forward, I would expect that it would take approximately a year (and perhaps longer) from the date an application for judicial review is filed, until the date we receive a decision.

D. City cannot file *Charter* challenge or human rights complaint

As a corporation, the City cannot file an effective challenge under the *Canadian Charter of Rights and Freedoms* based on s. 7 (security of the person) or s. 15 (equality rights), nor can the City make a complaint under provincial human rights legislation. These arguments would have to be made on behalf of individual residents, arguing that they have been directly impacted by the closure of the UCC. I am not aware of closures to healthcare facilities being successfully challenged using either a *Charter* challenge (ss. 7 or 15) or a human rights complaint strategy.

I hope you have found this opinion useful. Should you have any questions, please let me know and I would be happy to discuss them with you.

Yours truly,

A handwritten signature in blue ink, appearing to read 'Justin Safayeni'.

Justin Safayeni

JS/

CC: Geneviève-Renée Bisson, *Senior Health Advisor* (Genevieve-Renee.Bisson@portcolborne.ca)